

REMARKS

Claims 13-20, 22-26 and 28-62 remain pending in the application. New claims 63-67 have been added to further define patentable aspects of Applicant's invention. Pending claims 13-17, 20, 22-26, 28-51 and 53, 55 and 58 were rejected under 35 U.S.C. 103 (a) as being unpatentable over Larsson, et al. (4,413,464) in view of Agahassipour (5,595,320). Claims 33-34 and 40 have been alternatively rejected under 35 U.S.C. 103 (a) as being unpatentable over Larsson, et al. and Aghassipour and further in view of McCord (728,749). Claims 18-19, 52, 54-57 and 59 were rejected under 35 U.S.C. 103 (a) as being unpatentable over Larsson in view of Aghassipour and further in view of Becker (4,929,094) or Shea (5,314,087). Claims 60-62 have been withdrawn from consideration by the Examiner as being directed to a non-elected invention. Applicant respectfully traverses these rejections for the reasons set forth below in the Request for Reconsideration thereof.

In summary, the Larsson reference differs significantly from Applicant's claimed invention. In addition, the combinations made out by the Examiner to form the obviousness rejections of record in this case are improper. There is no motivation or suggestion to combine the references (particularly the Larsson, Shaw and/or Becker patents) as the Examiner has. In fact, combining the references as indicated would require destruction of the physical devices described in the Larsson reference. It would further require one to move in a completely opposite and contrary direction to the very teaching of the Larsson references referred to specifically as the "inventive concept" of that patent (column 6, lines 66-67) and render the device inoperable for the stated purpose. As such, the Larsson reference specifically teaches

squarely away from combination with any of the references utilized by the Examiner to form the obviousness rejections in this case.

The Larsson reference differs in at least five major ways from the Applicant's claimed invention. First, the Larsson inner container is required to be fastened to the outer container when it is inserted therein. This is required in all embodiments taught in the reference. Not only does the Larsson reference require that the inner container must be fastened to the outer container, but it requires this be done prior to filling the inner container. Larsson also requires this to be done in a manner such that the bottom wall of the inner container is fastened to a flange in the outer container so that a smooth bottom wall without folds and adhesives is presented for subsequent opening.

The Examiner attempts to combine the Larsson reference with the Aghassipour, Becker and Shea references to reject several of Applicant's claims, which such as claim 53, specifically state that the inner container is not adhered to the outer container when it is inserted therein. The proposed combination of Larsson with the Becker or Shea references is improper and would require destruction of the device in the Larsson reference which would be completely contrary to the teaching therein. As set forth above, Larsson teaches only a construction where the inner container is adhered to the outer container. It teaches that this is the "inventive concept" of the reference that is required so that the bottom of the container will be held taught and will present a flat, fold-free surface to assist emptying of the contents by cutting through that surface. New claims 66 and 67 recite the very same limitation as claim 53 in combination with other limitations regarding the extent of adjustability of the sidewalls of the inner container.

The Examiner has agreed that the Aghassipour reference does not teach combination of an inner and outer container and that this reference has not been cited for that purpose. The attempt to combine the teaching of the Becker or Shea reference where an inner container is inserted into an outer container without adhering is improper since it is specifically taught against in the Larsson reference. To do so would be completely contrary to the teaching of Larsson and render the Larsson container inoperable since the inner container would no longer adhere as required in order to allow a cut to be made in the bottom thereof to allow exit of the material. It must be kept in mind that, as stated in the Larsson reference, the container described therein is specifically designed for shipping goods that include liquid, semi-liquid, powdered and semi-solid goods. Not adhering the inner container to the outer container as described in Larsson would therefore defeat the ability of the Larsson structure to permit access to the contents as contemplated therein.

The second major distinction is that the Larsson patent specifically teaches that the inner container is always completely sealed after it is placed in the outer container and material is placed therein. Given that liquid and powdered materials are specifically contemplated as being transported by the Larsson packaging, this requirement is obviously necessary. Attempting to combine Larsson with any reference that teaches that the inner container is not sealed after it is placed in the outer container, again is improper and would result in the destruction of the Larsson device and render it useless, since this device is stated to be specifically designed to ship powders and liquids.

The third major difference in the Larsson reference is that the container is filled through the top, is then permanently sealed, and material is later removed from the bottom or opposite surface of the container which is required to be a flat surface without joints, folds or flaps. None of the teachings of any or the references make up for any of these deficiencies in the Larsson teaching. Furthermore, Larsson teaches only that goods must be entered through the top and exited through the bottom. This is not properly combinable with any references, such as Shea or Becker, that specifically teach entry and exit through the same opening, are completely contrary to the teachings of Larsson and do not provide a flat exit surface without joints, folds or flaps opposite the top that can be easily cut into to provide access to the contents for removing them from the inner container.

The fourth major distinction is that the Larsson patent provides no teaching or suggestion of adjustable inner container sidewalls and flaps. The height of the sidewalls and flaps of the Larsson inner container are not taught to be adjustable in any way. The idea they are flexible, so therefore inherently adjustable, has no support in the Larsson reference as is required. As a result, the Larsson inner container cannot be utilized to accommodate either a full shipment or a partially full shipment, when it is desired to have minimal airspace inside the inner container once the material being shipped is packed, as is possible in Applicant's claimed invention.

The fifth major distinction is that the Larsson patent specifically requires an inwardly extending flange spaced from the bottom of the outer container, which the inner container contacts and is adhered to. As a result, the inner container cannot extend the full length of the sidewall of the outer container. The stated reason for this is found in column 6, lines 42-45 of

Larsson, wherein it is stated that this space is designed to accommodate a reclosure lid 29 wherein the lid 29 will not extend from the outer walls of the package, optimizing space available on pallets. As a result, the Larsson inner container cannot extend the entire length of the sidewall of the outer container. Furthermore, the Larsson container cannot, as a result of the flange and the lid 29, ever be in a position wherein both the top and bottom of the inner container are in partial contact with the interior of the outer container or offer the option of selecting whether the inner container contacts either one or both of the top and bottom of the interior of the outer container.

Newly added claims 63-67 specifically address this distinction. For example, claim 63 and the claims dependent therefrom, specifically requires that the height of the sidewalls and walls of the inner container are selectively adjustable between a first position, wherein their height is equal to the height of the sidewalls in the outer container and a second position wherein the height of the sidewalls and walls in the inner container is less than the height of the sidewalls of the outer container.

Similarly, new claims 64 and the claims dependent therefrom, specifically requires that the inner container be adjustable between a first position wherein both the top and bottom of the inner container are in contact with the inner surface of the outer container and a second position wherein only one of the top and bottom of the inner container are in contact with the inner surface of the outer container when the outer container is in a sealed closed position. As set forth above, the Larsson reference does not teach or suggest this limitation. Nor do any of the other references taken alone or in combination with Larsson. Any attempt to combine a reference with

Larsson, which would permit contact of the top and the bottom of the inner container with the interior surface of the outer container, would again destroy and render useless the Larsson device, since both the flange and the lid would have to be removed.

In contrast to the cited prior art, Applicant's invention as set forth in previously pending claims 13-20, 22-26 and 28-59 all require the height of the sidewalls and flaps to be selectively adjustable and the inner container to be selectively removable from the outer container. Claims 52, 55 and 57 specifically require that the inner container is not adhered to the outer container.

Claims 51, 54, 57, 59 and 60 specifically require that the top of Applicant's container be recloseable and/or that it completely cover the contents of the inner container, but does not form a non-airtight seal. Claims 56 and 60-62 requires that the top provide the sole access to the interior of the inner container for both filling and emptying. Additionally, claims 51, 54, 57 and 59-62 specifically require that the top does not form a moisture-proof or airtight seal. All of these claims define patentable subject matter over the Larsson reference taken in combination with any references appropriate to combine therewith, since Larsson requires the inner container to be completely sealed it is filled through the top and emptied through the bottom, it is adhered to the outer container and provides for no height adjustability.

The Examiner also required restriction between claims 13-59 and claims 60-62 of the claims previously presented, arguing that the method of claims 60-62 was patentably distinct from the container originally claimed in claims 13-59. Applicant respectfully traverses this rejection. The reasons stated for the Examiner for requiring restriction was that the process for

using the product as claimed, could be performed by another materially different product.

Applicant respectfully submits that this is not the case since the first providing step in the independent method claim 60 requires all of the structural elements of Applicant's product claim.

Reconsideration and removal of this restriction requirement is requested.

For the foregoing reasons, Applicant respectfully submits that all claims as amended define patentable subject matter overall. The Applicant respectfully requests allowance of all claims. The Applicant further requests that an interview be granted to action on this amendment, since an interview was not granted after issuance of the final office action in this case. If the Examiner has any question regarding this amendment, he is invited to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,



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9/3/04

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